



**ENVIRONMENTAL PROTECTION AGENCY**

**6560-50-P**

**40 CFR Part 372**

**[EPA-HQ-TRI-2012-0110; FRL-9915-59-OEI]**

**RIN 2025-AA34**

**Addition of Nonylphenol Category; Community Right-to-Know Toxic Chemical Release Reporting**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is adding a nonylphenol category to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. EPA is adding this chemical category to the EPCRA section 313 list pursuant to its authority to add chemicals and chemical categories because EPA has determined that this category meets the EPCRA section 313(d)(2)(C) toxicity criterion.

**DATES:** This final rule is effective on [Insert date of publication in the **Federal Register**], and shall apply for the reporting year beginning January 1, 2015 (reports due July 1, 2016).

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. **EPA-HQ-**

**TRI-2012-0110**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. This Docket

Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0677; email: [bushman.daniel@epa.gov](mailto:bushman.daniel@epa.gov), for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424-9346 (select menu option 3) or (703) 412-9810 in Virginia and Alaska or toll free, TDD (800) 553-7672, <http://www.epa.gov/superfund/contacts/infocenter/>.

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Does this Notice Apply to Me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use nonylphenol. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	<p>Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*.</p> <p>*Exceptions and/or limitations exist for these NAICS codes.</p> <p>Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except</p>

	1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (corresponds to SIC 4953, Refuse Systems).
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

## II. Introduction

### *A. What is the Statutory Authority for this Final Rule?*

This rule is issued under EPCRA section 313(d) and section 328, 42 U.S.C. 11023 *et seq.* EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

### *B. What is the Background for this Action?*

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the listing criteria in Section 313(d)(2)(A)-(C) are met. The EPCRA section 313(d)(2)(A)-(C) criteria are:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans:
  - cancer or teratogenic effects, or
  - serious or irreversible—
    - reproductive dysfunctions,
    - neurological disorders,

- heritable genetic mutations, or
  - other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of:
  - its toxicity,
  - its toxicity and persistence in the environment, or
  - its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

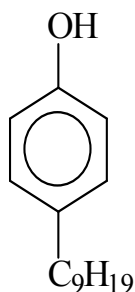
EPA often refers to the section 313(d)(2)(A) criterion as the “acute human health effects criterion;” the section 313(d)(2)(B) criterion as the “chronic human health effects criterion;” and the section 313(d)(2)(C) criterion as the “environmental effects criterion.”

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432), a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

### **III. Summary of Proposed Rule**

#### *A. What chemical did EPA propose to add to the EPCRA section 313 list of toxic chemicals?*

EPA proposed to add a nonylphenol category to the EPCRA section 313 list of toxic chemicals. As discussed in the proposed rule (78 FR 37176, June 20, 2013) because there is no one Chemical Abstract Service Registry Number (CASRN) that adequately captures what is referred to as nonylphenol and because of the apparent confusion that has resulted from the use of multiple CASRN, EPA proposed to add nonylphenol as a category defined by a structure. EPA proposed to define the nonylphenol category using the structure and text presented below.



Where C<sub>9</sub>H<sub>19</sub> = Branched or linear alkyl chain

*B. What was EPA's rationale for proposing to list nonylphenol?*

As EPA stated in the proposed rule (78 FR 37176, June 20, 2013), nonylphenol is highly toxic to numerous species of aquatic organisms. EPA's technical evaluation of nonylphenol showed that it can reasonably be anticipated to cause, because of its toxicity, significant adverse effects in aquatic organisms. The observed effects from nonylphenol exposure occur at very low concentrations demonstrating that nonylphenol is highly toxic to aquatic organisms. Data summarized in the proposed rule included acute toxicity values for freshwater organisms ranging from 21 micrograms per liter (µg/L) for a detritivorous amphipod to 774 µg/L for an algal grazing snail. Acute toxicity values for freshwater fish ranged from 110 µg/L for the fountain darter to 128 to 360 µg/L for the fathead minnow. Acute toxicity values for saltwater organisms ranged from 17 µg/L for the winter flounder to 310 µg/L for the sheepshead minnow. The proposed rule also cited chronic toxicity values for several aquatic species ranging from 5 µg/L for growth effects in mysid shrimp to 377 µg/L for survival effects in water fleas. Chronic toxicity values for rainbow trout ranged from 8 µg/L for effects on growth to 53 µg/L for abnormal development. Reproductive, developmental, and estrogenic effects on aquatic organisms have also been reported for nonylphenol with some effects observed at concentrations of 4 µg/L or less. In the proposed rule EPA stated it believes that the evidence is sufficient for

listing the nonylphenol category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data.

#### **IV. What comments did EPA receive on the proposed rule and what are EPA's responses to those comments?**

EPA received three comments on the proposed rule to add a nonylphenol category to the EPCRA section 313 list of toxic chemicals. The comments received were from the following groups, the Alkylphenols & Ethoxylates Research Council (APERC) (Reference (Ref.) 1), Intel Corporation (Ref. 2), and the National Council for Air and Stream Improvement (NCASI) (Ref. 3). Summaries of the most significant comments and EPA's response are discussed below. The complete set of comments and EPA's detailed responses can be found in the response to comments document in the docket for this rulemaking (Ref. 4).

All three commenters requested that EPA define the nonylphenol category by chemical name and CASRN rather than by a chemical structure. The commenters were concerned that reporting by chemical structure would be difficult for some reporters who lacked detailed knowledge of the chemicals they use. The commenters felt that using chemical names and CASRNs would simplify reporting and be less burdensome.

There are several TRI chemical categories listed based on chemical structures or chemical formulas and reporting has not been a significant issue for those listings. EPA continues to believe that listing nonylphenol as a category defined by structure would be an appropriate way to list the category. However, since there are a limited number of CASRNs used to identify nonylphenol mixtures, EPA has decided to modify the category listing to address the commenter's concerns. EPA is listing nonylphenol as a delimited category defined by the existing names and CASRNs. The nonylphenol category will be listed as:

Nonylphenol (This category includes only those chemicals listed below)

CAS Number	Chemical Name
104-40-5	4-Nonylphenol
11066-49-2	Isononylphenol
25154-52-3	Nonylphenol
26543-97-5	4-Isononylphenol
84852-15-3	4-Nonylphenol, branched
90481-04-2	Nonylphenol, branched

The category includes all of the CASRN and chemical names that the commenters cited as having been used to define nonylphenol. In addition, EPA has identified one additional CASRN (26543-52-3) that is covered by the category. This limited set of chemical names and CAS numbers covers all the chemicals we are aware of that would have been in the category as described by chemical structure. At this time, EPA does not expect that reports will be filed for any of the identified CASRNs other than 84852-15-3 and 25154-52-3, which were used to estimate the cost of the proposed nonylphenol category (Ref. 5). Nevertheless, the other CASRNs are included in order to cover the complete nonylphenol category that has been identified at this time. As noted by one commenter, this type of category listing is similar to the current listings for diisocyanates, dioxin and dioxin-like compounds, and polycyclic aromatic compounds. While listing nonylphenol as a chemical structure based category would be appropriate, listing the category by name and CASRN should eliminate the potential reporting issues the commenters identified with a structure based category.

APEREC stated that EPA proposed to list nonylphenol based on its toxicity and tendency to bioaccumulate in the environment under EPCRA section (d)(2)(C)(iii). APEREC noted that nonylphenol is not persistent or bioaccumulative and suggested that be recognized in EPA's hazard review for determining whether nonylphenol represents a sufficiently serious hazard to



warrant significant nation-wide reporting under EPCRA section 313. APERC stated that EPA should rely on definitions for “persistence” and “bioaccumulative”, which are consistent with those established for EPCRA section 313 (64 FR 58666, October 29, 1999). APERC also stated that nonylphenol was mischaracterized in the proposed rule as persistent based on statements previously made in the EPA Action Plan (Ref. 6). APERC requested that EPA correct the record for the proposed rule and Action Plan to reflect that nonylphenol is not persistent or bioaccumulative.

APERC is mistaken in their understanding of the basis EPA cited to support the listing of the nonylphenol category. EPA did not propose to list the nonylphenol category under EPCRA section (d)(2)(C)(iii). While bioaccumulation data was discussed in the technical section of the proposed rule, the rationale that EPA cited for listing the nonylphenol category was:

“EPA’s technical evaluation of nonylphenol shows that it can reasonably be anticipated to cause, because of its toxicity, significant adverse effects in aquatic organisms.

Toxicity values for nonylphenol are available for numerous species of aquatic organisms.

The observed effects from nonylphenol exposure occur at very low concentrations

demonstrating that nonylphenol is highly toxic to aquatic organisms. Data summarized

in this document include acute toxicity values for freshwater organisms ranging from 21

µg/L for a detritivorous amphipod to 774 µg/L for an algal grazing snail. Acute toxicity

values for freshwater fish ranged from 110 µg/L for the fountain darter to 128 to 360

µg/L for the fathead minnow. Acute toxicity values for saltwater organisms ranged from

17 µg/L for the winter flounder to 310 µg/L for the sheepshead minnow. Chronic

toxicity values are also available for several aquatic species ranging from 5 µg/L for

growth effects in mysid shrimp to 377 µg/L for survival effects in water fleas. Chronic

toxicity values for rainbow trout ranged from 8 µg/L for effects on growth to 53 µg/L for abnormal development. Reproductive, developmental, and estrogenic effects on aquatic organisms have also been reported for nonylphenol with some effects observed at concentrations of 4 µg/L or less. Therefore, EPA believes that the evidence is sufficient for listing the nonylphenol category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data.” (78 FR 37176, June 20, 2013)

The above rationale discussed only the toxicity data for nonylphenol, not the bioaccumulation data. EPA’s stated rationale for listing is based on the toxicity data for nonylphenol not a combination of toxicity and bioaccumulation. Nonylphenol is highly toxic to aquatic organisms and is sufficiently toxic as to meet the EPCRA section 313(d)(2)(C) criteria without consideration of bioaccumulation potential.

With regards to persistence and bioaccumulation, these are not properties that a chemical is required to have in order to meet the EPCRA section 313(d)(2)(C) listing criteria. As noted in Unit II, the EPCRA section 313(d)(2)(C) listing criteria is comprised of three separate parts:

- The chemical is known to cause or can be reasonably anticipated to cause, because of:
  - its toxicity,
  - its toxicity and persistence in the environment, or
  - its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

Under EPCRA section 313(d)(2)(C), a chemical may be added based on its toxicity, its toxicity and persistence in the environment, or its toxicity and tendency to bioaccumulate in the environment. A chemical only needs to meet one of these three criteria to be added.

Regarding the general use of the terms persistence and bioaccumulative, these terms are not absolutes. Chemicals that have persistence or bioaccumulation values below criteria established by EPA or some other organization for categorizing chemicals as Persistent, Bioaccumulative, and Toxic (PBT) chemicals does not mean that the chemicals are not persistent or bioaccumulative. For example, a chemical with a bioconcentration factor (BCF) of 500 bioaccumulates, just not to the extent that a chemical with a BCF of 1,000 does. Similarly, a chemical that persists in the environment with a half-life of 40 days is persistent just not as persistent as a chemical with a half-life of 60 days. As noted in the proposed rule, some of the nonylphenol BCF values for fish range from 203 to 344 with a BCF value of 2,168 for the blue mussel. As discussed in the Water Quality Criteria (WQC) document (Ref. 7), many studies have shown that nonylphenol is present in the environment, which indicates some level of persistence. EPA cited language from EPA's Action Plan for nonylphenol and nonylphenol ethoxylates that described nonylphenol as persistent and moderately bioaccumulative (Ref. 6). Given the available data, those characterizations were correct. EPA did not address the issue of whether the persistence and bioaccumulation data were sufficient to classify nonylphenol as a PBT chemical under EPA's established EPCRA section 313 PBT criteria since EPA was not attempting to classify nonylphenol as a PBT chemical.

APERC also stated that in the proposed rule EPA proposed listing nonylphenol based on the following reasoning:

“Nonylphenol is toxic to aquatic organisms and has been found in ambient waters.

Because of nonylphenol’s toxicity, chemical properties, and widespread use as a chemical intermediate, concerns have been raised over the potential risks to aquatic organisms from exposure to nonylphenol. All of the hazard information presented here has been adapted from EPA’s 2005 Criteria document for nonylphenol, which was previously peer reviewed (Ref. 3). Water Quality” (78 FR 37176, June 20, 2013).

APERC stated that there is no discussion of the numeric WQC developed for nonylphenol and that EPA does not consider whether concentrations in US waters represent a risk based on those WQC. APERC stated that this approach provides that best method to assess whether a compound can be reasonably anticipated to cause significant adverse effects in aquatic organisms.

The text quoted by APERC is from the introduction to the unit in the proposed rule entitled “IV. What Is EPA’s evaluation of the environmental toxicity of nonylphenol?” and is not the basis for the addition of nonylphenol. The quoted text simply states why EPA has developed concerns for potential releases of nonylphenol. The basis for the addition of nonylphenol was discussed under “Unit V. Rationale for Listing,” which summarized the extensive aquatic toxicity data for nonylphenol (see previous comment response).

With regards to the use of EPA’s 2005 WQC document for nonylphenol (Ref. 7), EPA relied on the hazard information contained in the WQC document and not the numeric WQC values developed for nonylphenol. The numeric WQC values are not toxicity values; they are concentrations that, if not exceeded, should not unacceptably affect aquatic organisms and their uses. For nonylphenol, the numeric WQC values are:

**“9.1. Freshwater**

The procedures described in the “Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses” (Stephan et al. 1985) indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the one-hour average concentration of nonylphenol does not exceed 28 µg/L more than once every three years on the average and if the four-day average concentration of nonylphenol does not exceed 6.6 µg/L more than once every three years on the average.

## **9.2. Saltwater**

The procedures described in the “Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses” (Stephan et al. 1985) indicate that, except possibly where a locally important species is very sensitive, [saltwater] aquatic organisms and their uses should not be affected unacceptably if the one-hour average concentration of nonylphenol does not exceed 7.0 µg/L more than once every three years on the average and if the four-day average concentration of nonylphenol does not exceed 1.7 µg/L more than once every three years on the average.” (Page 34, Ref. 7)

Since, as discussed in other responses, EPA is not required to consider exposure or risk in the listing of chemicals that are highly ecotoxic, there was no need to discuss the numeric WQC values in the proposed rule. However, EPA notes that the numeric WQC values are very low for nonylphenol, ranging from just 1.7 to 28 µg/L, which indicates a very high level of concern for this chemical.

With regards to the criteria language “a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section” chemicals that are highly ecotoxic meet this determination. Chemicals that are highly ecotoxic are considered to meet all the listing requirements of EPCRA section 313(d)(2)(C) since they can cause significant adverse effects at very low concentrations.

APERC contends that a probabilistic risk assessment of the extensive monitoring of nonylphenol in US waters indicates a low likelihood that this compound will exceed EPA’s WQC. APERC stated that there are extensive monitoring data on the occurrence and concentrations of nonylphenol in U.S. surface water, much of it conducted by EPA and the United States Geological Survey. APERC contends that based on available data the likelihood that concentrations of nonylphenol and other metabolites of nonylphenol ethoxylates in United States surface waters will exceed EPA’s chronic WQC (6.6 µg/L) for nonylphenol is low.

EPA does not consider potential exposures or risks under the EPCRA section 313(d)(2)(C) criteria when adding a chemical that is highly toxic to aquatic organisms. With regard to the use of exposure or risk assessments in the listing of chemicals under the EPCRA section 313(d)(2) criteria, EPA has stated its policy:

“The Agency believes that exposure considerations are not appropriate in making determinations (1) under section 313(d)(2)(B) for chemicals that exhibit moderately high to high human toxicity (These terms, which do not directly correlate to the numerical screening values reflected in the Draft Hazard Assessment Guidelines, are defined in unit II.) based on a hazard assessment, and (2) under section 313(d)(2)(C) for chemicals that are highly ecotoxic or induce well-established adverse environmental effects. For chemicals which induce well-established serious adverse effects, e.g.,

chlorofluorocarbons, which cause stratospheric ozone depletion, EPA believes that an exposure assessment is unnecessary. EPA believes that these chemicals typically do not affect solely one or two species but rather cause changes across a whole ecosystem. EPA believes that these effects are sufficiently serious because of the scope of their impact and the well documented evidence supporting the adverse effects. EPA, however, disagrees with those commenters who suggest that EPA must include a risk assessment component to EPCRA section 313 determinations. Specifically, EPA does not agree with the commenters about the extent to which exposure must be considered in making determinations under sections 313(d)(2)(B) and (C). This is primarily because EPA does not agree with the commenters' understanding of EPCRA section 313. Risk assessment may be pertinent and appropriate for use under statutes that control the manufacture, use, and/or disposal of a chemical, such as the Clean Air Act or the Toxic Substances Control Act. However, EPCRA section 313 is an information collection provision that is fundamentally different from other environmental statutes that control or restrict chemical activities. EPCRA section 313 charges EPA with collecting and disseminating information on releases, among other waste management data, so that communities can estimate local exposure and local risks; risks which can be significantly different than those which would be assessed using generic exposure considerations. The intent of EPCRA section 313 is to move the determination of what risks are acceptable from EPA to the communities in which the releases occur. This basic local empowerment is a cornerstone of the right-to-know program.” (59 FR 61432, November 30, 1994)

EPA went on to state that:

“Therefore, to meet its obligation under section 313(d)(2)(C), in cases where a chemical is low or moderately ecotoxic, EPA may look at certain exposure factors (including pollution controls, the volume and pattern of production, use, and release, environmental fate, as well as other chemical specific factors, and the use of estimated releases and modeling techniques) to determine if listing is reasonable, i.e., could the chemical ever be present at high enough concentrations to cause a significant adverse effect upon the environment to warrant listing under section 313(d)(2)(C). Of the chemicals being added in today's action pursuant to section 313(d)(2)(C), all but one are highly ecotoxic. These highly ecotoxic chemicals are being added to the EPCRA section 313 list pursuant to section 313(d)(2)(C) based on their hazard. The other chemical, which is moderately ecotoxic, is being added to the EPCRA section 313 list pursuant to section 313(d)(2)(C) based on both its hazard and an exposure assessment for this chemical.” (59 FR 61432, November 30, 1994)

EPA also noted that its established exposure policy is consistent with the legislative history of ECRCA section 313:

“EPA believes that its position regarding the use of hazard; exposure, and risk in listing decisions is consistent with the purpose and legislative history of EPCRA section 313, as illustrated in the following passage from the Conference report:

The Administrator, in determining to list a chemical under any of the above criteria, may, but is not required to conduct new studies or risk assessments or perform site specific analyses to establish actual ambient concentrations or to document adverse effects at any particular location. (H. Rep. 99- 962, 99th Cong., 2nd Sess., p. 295 (Oct. 3, 1986)).



This passage indicates Congress did not intend to require EPA to conduct new studies, such as exposure studies, or perform risk assessments, and therefore did not consider these activities to be mandatory components of all section 313 decisions. EPA believes that this statement combined with the plain language of the statutory criteria clearly indicate that Congress intended that the decision of whether and how to consider exposure under EPCRA section 313(d)(2)(B) and (C) should be left to the Agency's discretion. EPA has carefully considered when and how to use exposure to fully implement the right-to-know provisions of EPCRA. The Agency believes that in this final rule, EPA has appropriately used the discretion provided to it to assure the addition of chemicals that meet the right-to-know objectives of EPCRA section 313 while not unduly burdening the regulated community.” (59 FR 61441, November 30, 1994)

More recently, EPA again explained its policy on the use of exposure in a **Federal Register** notice on the lifting of the reporting stay for hydrogen sulfide:

“Hydrogen sulfide has also been determined to cause ecotoxicity at relatively low concentrations, and thus is considered to have high ecotoxicity. EPA believes that chemicals that induce death or serious adverse effects in aquatic organisms at relatively low concentrations (i.e., they have high ecotoxicity) have the potential to cause significant changes in the population of fish and other aquatic organisms, and can therefore reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. EPA does not believe that it is required to consider exposure for chemicals that have high ecotoxicity based on a hazard assessment when determining if a chemical can be listed for effects pursuant to

EPCRA section 313(d)(2)(C) (see 59 FR 61432, 61433, 61440-61442).” (75 FR 8889, February. 26, 2010)

Additional discussion of EPA’s use of exposure in chemical listing actions can be found in the final notice that lifted the reporting stay for hydrogen sulfide (76 FR 64022, October 17, 2011). Nonylphenol is one of the most ecotoxic chemicals that EPA has proposed to add to the EPCRA section 313 chemical list. EPA did not consider exposure or risk in its assessment of nonylphenol since it is toxic to numerous aquatic organisms at very low concentrations and thus is considered to be highly toxic to aquatic organisms.

## **V. Summary of Final Rule**

EPA is finalizing the addition of a nonylphenol category to the EPCRA section 313 list of toxic chemicals. EPA has determined that nonylphenol meets the listing criteria under EPCRA section 313(d)(2)(C) based on the available ecological toxicity data. However, based on the comments received on the propose rule, the nonylphenol category will be defined by a list of chemical names and CASRNs rather than by a chemical structure. The category definition will be:

Nonylphenol (This category includes only those chemicals listed below)

104-40-5	4-Nonylphenol
11066-49-2	Isononylphenol
25154-52-3	Nonylphenol
26543-97-5	4-Isononylphenol
84852-15-3	4-Nonylphenol, branched
90481-04-2	Nonylphenol, branched

## **VI. References**

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-TRI-2012-0110. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located

in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above FOR FURTHER INFORMATION CONTACT section.

1. Alkylphenols & Ethoxylates Research Council. Comments on US EPA Proposed Rule for Addition of Nonylphenol Category To Community Right-to-Know Toxic Chemical Release Reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act. Docket ID No. EPA-HQ-TRI-2012-0110. August 19, 2013

2. Intel Corporation. Comments on the Proposed Addition of Nonylphenol Category; Community Right-to-Know Toxic Chemical Release Reporting (78 FR 37176-37186; June 20, 2013). July 9, 2013.

3. National Council for Air and Stream Improvement. RE: Docket ID No. EPA-HQ-TRI-2012-0110, Addition of Nonylphenol Category; Community Right-to-Know Toxic Chemical Release Reporting (78 Federal Register 37176, June 20, 2013). August 19, 2013.

4. USEPA, OEI, Response to Comments Received on the June 20, 2013 Proposed Rule (78 FR 37176): Addition of Nonylphenol Category; Community Right-to-Know Toxic Chemical Release Reporting. U.S. Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access. May 14, 2014

5. USEPA, OEI. Economic Analysis of the Final Rule to add Nonylphenol to the EPCRA Section 313 List of Toxic Chemicals. May 7, 2014.

6. USEPA. 2010. Nonylphenol (NP) and Nonylphenol Ethoxylates (NPEs) Action Plan (RIN 2070-ZA09). United States Environmental Protection Agency, Washington, DC. August 18, 2010.

7. USEPA. 2005. Aquatic Life Ambient Water Quality Criteria - Nonylphenol Final. United States Environmental Protection Agency, Washington, DC. Office of Water. EPA-822-R-05-005. December 2005.

## **VII. What are the Statutory and Executive Order reviews associated with this action?**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This final rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et. seq. Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use either the EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350-1), or the EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350- 2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the

chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042: 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025-0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050-0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

*C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a "small business" by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or

special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Of the 54 entities estimated to be impacted by this rule, 39 are small businesses. Of the affected small businesses, all 39 have cost-to-revenue impacts of less than 1% in both the first and subsequent years of the rulemaking. No small businesses are projected to have a cost impact in the first year of 1% or greater. Facilities eligible to use Form A (those meeting the appropriate activity threshold which have 500 pounds per year or less of reportable amounts of the chemical) will have a lower burden. No small governments or small organizations are expected to be affected by this action. Thus, this rule is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document (Ref. 5).

#### *D. Unfunded Mandates Reform Act*

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's economic analysis indicates that the total cost of this rule is estimated to be \$183,953 in the first year of reporting (Ref. 5). Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

*E. Executive Order 13132 (Federalism)*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule adds an additional chemical to the EPCRA section 313 reporting requirements. By adding a chemical to the list of toxic chemicals subject to reporting under



section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective [Insert date of publication in the **Federal Register**].

## List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: September 23, 2014.

*Gina McCarthy,*  
*Administrator.*

Therefore, 40 CFR part 372 is amended as follows:

### **PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW**

1. The authority citation for part 372 continues to read as follows:

**Authority:** 42 U.S.C. 11023 and 11048.

2. In § 372.65, paragraph (c) is amended by adding in the table the entry for

“Nonylphenol” in alphabetical order to read as follows:

#### **§ 372.65 Chemicals and chemical categories to which this part applies.**

\* \* \* \* \*

(c) \* \* \*

Category name	Effective date
* * * * *	
Nonylphenol (This category includes only those chemicals listed below)	1/1/15
104-40-5 4-Nonylphenol	
11066-49-2 Isononylphenol	
25154-52-3 Nonylphenol	
26543-97-5 4-Isononylphenol	
84852-15-3 4-Nonylphenol, branched	
90481-04-2 Nonylphenol, branched	
* * * * *	

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[FR Doc. 2014-23255 Filed 09/29/2014 at 8:45 am; Publication Date: 09/30/2014]